

PAUL J. RIEHLE (SBN 115199)
paul.riehle@faegredrinker.com
**FAEGRE DRINKER BIDDLE & REATH
LLP**
Four Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510

CHRISTINE A. VARNEY (*pro hac vice*)
cvarney@cravath.com
KATHERINE B. FORREST (*pro hac vice*)
kforrest@cravath.com
GARY A. BORNSTEIN (*pro hac vice*)
gbornstein@cravath.com
YONATAN EVEN (*pro hac vice*)
yeven@cravath.com
LAUREN A. MOSKOWITZ (*pro hac vice*)
lmoskowitz@cravath.com
M. BRENT BYARS (*pro hac vice*)
mbyars@cravath.com
CRAVATH, SWAINE & MOORE LLP
825 Eighth Avenue
New York, New York 10019
Telephone: (212) 474-1000
Facsimile: (212) 474-3700

*Attorneys for Plaintiff and Counter-
defendant Epic Games, Inc.*

[Additional counsel appear on signature
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THEODORE J. BOUTROUS JR. (SBN
132099)
tboutrous@gibsondunn.com
RICHARD J. DOREN (SBN 124666)
rdoren@gibsondunn.com
DANIEL G. SWANSON (SBN 116556)
dswanson@gibsondunn.com
JAY P. SRINIVASAN (SBN 181471)
jsrinivasan@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

VERONICA S. MOYE (*pro hac vice*)
vlewis@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
2100 McKinney Avenue, Suite 1100
Dallas, TX 75201
Telephone: 214.698.3100
Facsimile: 214.571.2900

CYNTHIA E. RICHMAN (*pro hac vice*)
crichman@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306
Telephone: 202.955.8500
Facsimile: 202.467.0539

*Attorneys for Defendant and
Counterclaimant Apple Inc.*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

vs.

APPLE INC.,

Defendant, Counterclaimant.

No. 4:20-CV-05640-YGR-TSH

**STIPULATION AND ~~PROPOSED~~
ORDER RE BREACH OF CONTRACT
COUNTERCLAIM**

Trial Date: May 3, 2021
Time: 8:00 a.m.
Courtroom: 1, 4th Floor
Judge: Hon. Yvonne Gonzalez Rogers

1 Pursuant to the Court's Standing Order Re: Pretrial Instructions in Civil Cases,
2 Plaintiff and Counter-defendant Epic Games, Inc. ("Epic"), and Defendant and Counterclaimant
3 Apple Inc. ("Apple"), together, the "Parties", by and through their undersigned counsel, hereby
4 agree and stipulate to the following:

5 1. Epic stipulates and agrees that Apple has proven all elements of its cause of
6 action for breach of Epic's Apple Developer Program License Agreement with Apple (the
7 "DPLA"), the incorporated App Store Review Guidelines, and Schedule 2 to the DPLA. *See*
8 Counterclaims Count I (ECF No. 66 at 56-57).

9 2. This stipulation does not resolve the First and Second (illegal under the
10 antitrust laws), Third (void as against public policy), or Fourth (unconscionability) affirmative
11 defenses asserted by Epic. *See* Answer to Counterclaims (ECF No. 106 at 17).

12 3. If Epic is found liable for breach of contract following resolution by the
13 Court of the affirmative defenses specified in paragraph 2, then (a) Apple would be entitled to
14 recover damages in an amount equal to (i) 30% of the \$12,167,719 in revenue Epic collected from
15 users in the *Fortnite* app on iOS through Epic Direct Payment between August and October 2020,
16 plus (ii) 30% of any such revenue Epic collected from November 1, 2020 through the date of
17 judgment; and (b) Apple would be entitled to a declaration that (i) Apple's termination of the
18 DPLA and Developer Agreement between Epic and Apple was valid, lawful, and enforceable, and
19 (ii) Apple has the contractual right to terminate its DPLA with any or all of Epic's wholly owned
20 subsidiaries, affiliates, and/or other entities under Epic's control at any time and at Apple's sole
21 discretion. *See* Joint Submission Regarding Trial Elements, Legal Framework and Remedies,
22 Appendix A (ECF No. 276-1 at 9).

23 4. This stipulation does not resolve any other cause of action asserted by
24 Apple, including but not limited to its claim for indemnification under the DPLA (Counterclaims
25 Count VII (ECF No. 66 at 63-64), or its claim for unjust enrichment (Counterclaims Count III
26 (ECF No. 66, at 58).

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 Dated: April 22, 2021

CRAVATH, SWAINE & MOORE LLP

Christine A. Varney (*pro hac vice*)

Katherine B. Forrest (*pro hac vice*)

Gary A. Bornstein (*pro hac vice*)

Yonatan Even (*pro hac vice*)

Lauren A. Moskowitz (*pro hac vice*)

M. Brent Byars (*pro hac vice*)

4
5
6
7 FAEGRE DRINKER RIDDLE & REATH
LLP

Paul J. Riehle

8
9 By: /s/ Katherine B. Forrest

Katherine B. Forrest

825 Eighth Avenue

New York, New York 10019

Telephone: (212) 474-1000

11
12 *Attorneys for Plaintiff and*
13 *Counter-defendant Epic Games, Inc.*

14
15 Dated: April 22, 2021

GIBSON, DUNN & CRUTCHER LLP

Theodore J. Boutrous Jr.

Richard J. Doren

Daniel G. Swanson

Mark A. Perry

Veronica S. Moye

Cynthia E. Richman

Jay P. Srinivasan

Ethan D. Dettmer

Eli M. Lazarus

16
17
18
19
20 By: /s/ Richard J. Doren

Richard J. Doren

333 South Grand Avenue

Los Angeles, CA 90071

Telephone: (213) 229-7000

21
22
23 *Attorneys for Defendant and*
24 *Counterclaimant Apple Inc.*

1 **PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO**
2 **ORDERED.**

3
4 DATED: April 23, 2021


HON. YVONNE GONZALEZ ROGERS
United States District Judge

ECF SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1, the filer of this document hereby attests that the concurrence of the filing of this document has been obtained from the other signatory hereto.

Dated: April 22, 2021

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Richard J. Doren

Richard J. Doren

*Attorney for Defendant and
Counterclaimant Apple Inc.*